

HON. LONNY R. SUKO

Kirkham Law Office PLLC  
James D. Kirkham Jr.  
420 N. Pearl St. Ste 303  
Ellensburg, WA 98926-3112  
(509) 389-8106  
[james@kirkhamlaw.com](mailto:james@kirkhamlaw.com)  
Attorney for Plaintiff

Jerry J. Moberg  
Jerry Moberg & Associates, P.S.  
P.O. Box 130 – 124 3<sup>rd</sup> Avenue S.W.  
Ephrata, WA 98823  
[jmoberg@jmlawps.com](mailto:jmoberg@jmlawps.com)  
(509) 754-2356  
Attorneys for Defendants

UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF WASHINGTON

DAVID A DODD,

Plaintiff,

v.

JAMES W. MARSHALL and CITY OF  
EAST WENATCHEE, sued in individual  
and official capacities,

Defendants.

NO. CV - 12-522-LRS

**FIRST AMENDED [PROPOSED]  
JOINT PRETRIAL ORDER**

COME NOW the parties, by and through their attorneys of record -- James D. Kirkham Jr., attorney for Plaintiff, and Jerry J. Moberg and Brian A. Christensen, attorneys for Defendants James W. Marshall and City of East Wenatchee -- and present this Proposed Joint Pretrial as follows:

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FIRST AMENDED JOINT PRE-TRIAL ORDER

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**Jerry J. Moberg & Associates**  
**Attorneys At Law**  
451 Diamond Drive  
Ephrata, WA 98823  
(509) 754-2356 / Fax (509) 754-4202

1                                   **I.     NATURE OF PROCEEDINGS AND**  
2                                   **STATEMENT OF JURISDICTION**

3           This § 1983 lawsuit also involves state law negligence claims. This case  
4 involves an occurrence of June 9, 2010 in East Wenatchee, WA. Plaintiff contends  
5 that he was subjected to harassment when Defendant Officer James W. Marshall of  
6 the East Wenatchee Police Department arrested him for failing to stop for an  
7 officer and for suspected driving under the influence. Plaintiff further contends that  
8 Defendant East Wenatchee's police department failed to properly train Officer  
9 Marshall. Plaintiff admits that even though he felt intimidated and harassed, he  
10 approached the officer in the Costco parking lot on the driver's side of the Officer  
11 Marshall's marked police vehicle and confronted Officer Marshall. Plaintiff  
12 contends that he told the officer "I don't know why you are flipping u-turns behind  
13 me, but I have a license, registration, and insurance" and further stated "you need  
14 to get off my ass and quit harassing me." According to Plaintiff, he then drove off  
15 carefully and was not speeding and stopped at all stop signs while driving to his  
16 residence. It was after that incident that Plaintiff contends that the Defendant  
17 unlawfully pursued and arrested Plaintiff and Plaintiff's home.

18           Officer Marshall contends that Plaintiff approached him from behind at a  
19 high rate of speed, stopped in the oncoming lane and began to yell obscenities.  
20 Defendant Marshall contends that Plaintiff was waving his arms in a highly  
21  
22  
23

1 agitated state yelling things to the effect of “leave me the f--- alone.” It was at that  
2 point that Officer Marshall feared for his safety and the safety of others.  
3 Defendants assert that Plaintiff sped away at a high rate of speed. Defendants  
4 further contend that, after contact, Officer Marshall’s intent was to make a stop on  
5 the vehicle for driving on the wrong side of the road and speeding through a  
6 parking lot.  
7

8 Once they arrived at Plaintiff’s residence, Plaintiff contends that Officer  
9 Marshall came out of the police car with a Taser in one hand and his service  
10 weapon and insisted that Plaintiff get on the ground and to keep his face down.  
11 Officer Marshall then arrested Plaintiff for reckless driving.  
12

## 13 **II. AGREED FACTS**

14 Plaintiff made contact with Defendant Officer Marshall and spoke to him.

## 15 **III. PLAINTIFF’S CONTENTIONS**

16 Plaintiff’s contentions as to disputed are:

17 1. During the June 9, 2010 stop, Defendant did not observe Plaintiff’s  
18 fail to stop at any stop sign, of which there was at least two.  
19

20 2. Defendant also did not observe Plaintiff’s fail to signal prior to  
21 turning, of which there were at least five places where the Plaintiff was required to  
22 signal prior to turning.  
23

1           3. Defendant elected to pull Plaintiff over for speeding, even though he  
2 was unable to pace the vehicle, could not see the vehicle on all of Pace Drive or  
3 Highline, and could not see the vehicle on all or any of the streets thereafter.

4           4. Stop was unlawful.

5           5. Plaintiff's conduct did not justify Defendant's arrest, an arrest made  
6 with a gun drawn even though the stop was allegedly for speeding.  
7

#### 8                           **IV. DEFENDANTS' CONTENTIONS**

9           Defendants' contentions as to disputed facts are as follows:

10           1. Plaintiff posed an immediate threat to the safety of Officer Marshall,  
11 the ride along and to others.

12           2. Defendant had reasonable suspicion to believe that Plaintiff was  
13 driving at a rate of speed higher than the posted limit.  
14

15           3. Officer Marshall's use of force on Plaintiff was reasonable and  
16 justified when viewing the facts from the perspective of a reasonable police officer  
17 under the circumstances presented.

18           4. Officer Marshall's decision to use the force that he used was within  
19 the range of reasonable alternatives.  
20

21           5. The training policies of the East Wenatchee Police Department were  
22 adequate to train its police officers to handle the usual and recurring situations with  
23 which its police officers must deal.

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7. Plaintiff has no one to blame but himself for Officer Marshall's use of force.

9. Plaintiff was under the influence of something at the time of this incident which was a proximate cause of his injuries. Further, Plaintiff is more than 50 percent at fault.

1. Did Mr. Dodd speed, run a stop sign or violate any other traffic laws?

3. Was Mr. Dodd's damage caused by his own actions, i.e., failing to take the breath test, which automatically suspended his license?

5. Did Mr. Dodd fail to stop for the officer?

6. Did Officer Marshall act according to his training?

**VI. ISSUES OF LAW**

1. Did Officer Marshall have probable cause to pursue Mr. Dodd?
2. Did Officer Marshall use reasonable force in arresting Mr. Dodd?
3. Did Officer Marshall violate Mr. Dodd's right to free speech?
4. Did Officer Marshall falsely arrest Mr. Dodd?
5. Is the City of East Wenatchee liable for negligently hiring or supervising Mr. Dodd?
6. Is there any evidence of municipal liability?

**VII. EXHIBITS**

## Plaintiff's Exhibits:

Exhibit 1

Exhibit 2

Exhibit 3

Defendants' exhibits are the following:

EX #	DESCRIPTION OF EXHIBIT
104.	Certified Copies of the Judgment and Sentence for Superior Court Case No. 92-1-00084-2, State of Washington v. David Allyn Dodd
105.	Certified Copies of the amended Judgment and Sentence for Superior Court Case No. 92-1-00084-2, State of Washington v. David Allyn Dodd
106.	Certified Copies of the Judgment and Sentence for Superior Court Case No. 00-1-00257-3. State of Washington v. David Allyn Dodd
107.	Certified Copies of the Judgment and Sentence for Superior Court Case No. 02-1-00062-6. State of Washington v. David Allyn Dodd

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EX #	DESCRIPTION OF EXHIBIT
108.	Certified Copies of the Judgment and Sentence for Superior Court Case No. 07-1-00731-9. State of Washington v. David Allyn Dodd
109.	Certified Copies of the Judgment and Sentence for Superior Court Case No. 89-1-00042-4. State of Washington v. David Allyn Dodd
110.	Certified Copies of the Judgment and Sentence for Superior Court Case No. 87-1-00063-1. State of Washington v. David Allyn Dodd
111.	ILLUSTRATIVE MAP OF THE AREA OF EAST WENATCHEE INVOLVING THE FACTS OF THIS CASE
112.	Douglas County Sheriff's Office Car Camera Recording Arrest of David Allyn Dodd.

There are no objections to the above exhibits.

### VIII. WITNESSES

#### Plaintiff's Witnesses

- David Dodd  
Okanagan County Jail  
149 4th Ave N  
Okanogan, WA  
(509) 422-7230

#### Defendants' Witnesses

The following witnesses may be called by Defendants:

- Officer James W. Marshall  
East Wenatchee Police Department  
271 9<sup>th</sup> Street N.E.  
East Wenatchee, WA 98807  
(509) 884-9511
- Officer Ray Coble  
East Wenatchee Police Department  
271 9<sup>th</sup> Street N.E.  
East Wenatchee, WA 98807

(509) 884-9511

3. Officer Dean Schlaman  
East Wenatchee Police Department  
271 9<sup>th</sup> Street N.E.  
East Wenatchee, WA 98807  
(509) 884-9511

4. Trooper Thomas Moberg  
2822 Euclid Avenue  
Wenatchee, WA 98801  
(509) 682-8118

5. Katie Marshall  
Unknown

Defendants shall have the right to call any witnesses identified by Plaintiff that Plaintiff does not call during Plaintiff's case. Other than for rebuttal witnesses, no witnesses may be called unless listed above.

### **IX. RELIEF SOUGHT**

Plaintiff seeks an award of compensatory damages for injuries and damages proximately caused by the alleged wrongful conduct of Defendants.

Defendants seek an order of the Court dismissing this action with prejudice.

### **X. TRIAL**

Defendants estimate 3 days trial time. The parties stipulate and agree that (check appropriate box):

\_. An alternate juror is recommended.



\_. If a juror is excused during trial for good cause the parties stipulate to a verdict by five jurors.

x. No stipulation reached as to the above.

Unless otherwise specified in a scheduling order, proposed instructions and trial memoranda shall be filed and served at least 7 days prior to commencement of trial.

## XI. ACTION BY THE COURT

The Court has denied defendant's motion for summary judgment.

It is hereby ORDERED that the foregoing constitutes the pretrial order in the case and that upon the filing hereof all pleadings pass out of the case and are superseded by this Order. This Order may be amended by consent of the parties and approval by the Court or by the Court to prevent manifest injustice.

SUBMITTED this 20<sup>th</sup> day of February, 2014.

KIRKHAM LAW OFFICE, PLLC

*s/ James D. Kirkham, Jr.*

**JAMES D. KIRKHAM, JR., WSBA No. 36612**  
Attorneys for Plaintiff

JERRY MOBERG & ASSOCIATES, P.S.

s/ Jerry J. Moberg

JERRY J. MOBERG, WSBA No. 5282

[jmoberg@jmlawps.com](mailto:jmoberg@jmlawps.com)

451 Diamond Drive

Ephrata, WA 98823

(509) 745-2356

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

James D. Kirkham Jr.  
[james@kirkhamlaw.com](mailto:james@kirkhamlaw.com)

DATED this 26<sup>th</sup> day of February, 2014.

JERRY MOBERG & ASSOCIATES, PS.

/S/ Jerry J. Moberg  
JERRY J. MOBERG, WSBA No. 5282  
[jmoberg@canfieldsolutions.com](mailto:jmoberg@canfieldsolutions.com)